MAR 9 1959

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 760

LOCAL 259, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, (UE) et al., *Petitioners*,

v.

DOROTHY McCULLOUGH LEE, Individually and as Chairman of the Subversive Activities Control Board, et al.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above entitled case December 18, 1958.

CITATIONS TO OPINIONS BELOW

The oral opinion of the District Court for the District of Columbia is unreported and is printed at R.

262 F 2d 228

155. The opinion of the Court of Appeals, printed in Appendix B, *infra* p. 6a, is reported at F. 2d .

JURISDICTION

The judgment of the Court of Appeals was entered on December 18, 1958. (Appendix B, *infra* p. 8a) A timely petition for rehearing, filed December 31, 1958, (R. 166) was denied January 12, 1959 (R. 171). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

1. Whether a suit in the District Court by petitioners, four independent unions affiliated with a nationwide union, to dismiss a Petition by the Attorney General under the Subversive Activities Control Act of 1950, as amended, and to enjoin a proceeding thereon against their International before the Subversive Activities Control Board, is premature and the District Court is therefore without equitable jurisdiction to afford a remedy, where (1) petitioners are indispensable parties to that proceeding; (2) petitioners have been denied notice and opportunity to defend in that proceeding, in violation of statute and constitutional due process, with resulting injury; (3) petitioners have exhausted their administrative remedies before the Board; and (4) the Board is conducting but has not concluded a proceeding in the absence of petitioners as parties thereto.

2. (a) Whether petitioning independent local unions are indispensable parties to a proceeding before the Subversive Activities Control Board, on the Attorney General's Petition, under the Subversive Activities

Control Act of 1950, as amended, where, although the proceeding has been purportedly limited to the International part of the nationwide union with which they are affiliated, their interests are inseverable from those of the International and they are subject, in the event of an adverse determination by the Board against their International alone, to irreparable injury, by virtue of § 9 (h) of the Labor Management Relations Act of 1947, in the deprivation of all rights and benefits which they would otherwise be afforded under that Act; and

(b) whether, if so, there being no genuine issue of fact, the denial to petitioners of notice and hearing, in the continuing proceeding against the International, in violation of statute and constitutional due process, warrants summary judgment in their favor by the District Court.

3. Whether the District Court has equitable jurisdiction and petitioning local unions have standing to sue to enjoin and dismiss a Petition by the Attorney General, in a proceeding before the Subversive Activities Control Board under the Subversive Activities Control Act of 1950, as amended, where the Petition is directed against the entire union, including petitioners, and contains defamatory and admittedly unfounded charges against them, to their irreparable injury, of fraud, illegal union acts, and communist activity and where the Board, in violation of statute and constitutional due process, has finally denied them notice and opportunity to defend against such charges.

STATUTES INVOLVED

The statutory provisions involved are Sections 13A and 14A, 64 Stat. 987, 50 U.S.C. §§ 781-793 of the Subversive Activities Control Act of 1950, as amended

by the Communist Control Act of 1954, 68 Stat. 775, 50 U.S.C. §§ 791, 792 (Supp. V, 1958); Section 9(h) of the Labor Management Relations Act of 1947, 61 Stat. 36, 29 U.S.C. § 159(h); and § 10 of the Administrative Procedure Act, 60 Stat. 243 5 U.S.C. 1009. They are printed in Appendix A, *infra*, p. 1a.

STATEMENT

On December 20, 1955, the Attorney General filed his verified Petition (R. 15) with the Subversive Activities Control Board, pursuant to Section 13A (50 U.S.C. § 792) of the Subversive Activities Control Act of 1950, as amended. The Petition named as respondent United Electrical, Radio and Machine Workers of America, a Union, which it defined as including the entire union and all its parts: the international organization; the geographically separate district organizations; and the local units. It charged the entire union and its entire effective management, including officers and business agents of various local units, with acts of fraud, illegal union acts and communist activity; and it sought an order determining that the entire union is Communist infiltrated (R. 15, 17-18, 26).*

Despite the provisions of the statute (50 U.S.C. 792(a) and (c)), this Petition was served upon and notice of hearing given only to the International UE

* Respondent members of the Board and apparently the court below construe the Attorney General's Petition as directed not at the entire union, but only at its international organization. This is contrary to the plain language of the Petition. To conform to the Petition, we refer to the respondent as UE, meaning thereby the entire union as defined in the Petition. We refer to the "international organization" as the International UE, which the Petition defines as including the general officers and general executive Board; and to the "local units" as UE Locals.

at its office in New York City, and only the International UE was accorded the status of a respondent.

Hearings were commenced on the Petition and the answer of International UE on May 13, 1957, and continued until May 17, 1957. At the outset, the International UE moved to dismiss the Petition for failure to join as indispensable parties the various UE Locals affiliated with International UE. (R. 88-89)

On May 20, 1957, Petitioners UE Locals 259, 262, and 274, of Holyoke, Boston, and Greenfield, Massachusetts, respectively, filed separate special appearances, and petitions with supporting affidavits and exhibits for a rule to show cause as to why the Attorney General's Petition should not be dismissed for failure to join them as indispensable parties and for a stay of proceeding until decision on the matter. On the same day, a similar pleading was filed by Petitioner UE Local 125 of Scranton, Pennsylvania (R. 8, 28, 40, 62, 89, 134).

These pleadings alleged in substance that the petitioning UE Locals were voluntary unincorporated local labor unions affiliated with International UE, but with their own constitution, by-laws, and self-government; that each (in some instances jointly with International UE) had each been certified by the National Labor Relations Board as the exclusive representative for the purpose of collective bargaining of the employees of certain named employers and was currently a party to collective bargaining contracts with these and other employers; that none of these UE Locals had been made a party or given notice and opportunity to defend before the Subversive Activities Control Board against the charges which had been made against UE Locals in Paragraph X of the Attorney General's Peti-

tion; that such charges were false and defamatory and that the relief sought would destroy their National Labor Relations Board certifications, their collective bargaining contracts, and their status, rights, property and interests; that they were indispensable parties to the proceedings; and that the failure to join them as parties respondent constituted a denial of due process of law and required dismissal of the Attorney General's Petition.

These petitions were argued before a Board-Member Examiner and denied by him as of July 11, 1957 (R. 74, 87). The ground for the denial was, as a matter of law, "the organization before the Board under the Attorney General's Petition properly includes the affiliated locals", and, "Insofar as revealed from . . . facts of record, and in view of the Attorney General's sworn petition to the effect that the local units are integral constituent parts of UE, it is concluded for present purposes that the UE Locals and the UE International comprise a single entity and the locals are therefore before the Board." (R. 82, 87).

Petitioners thereupon appealed to the full Board, which heard oral argument on September 9, 1957 and on December 4, 1957 denied their appeal without prejudice. Although the Board held that the UE and its Locals were not a single integrated organization, it denied the Petitions on the ground that "if it is to be the theory of the proceeding that the UE International and its Locals are a single integrated organization and the locals would therefore be included in the event of an order adverse to the named respondent, a substantial question would be raised as to whether the locals, or perhaps an appropriate representative of them, are indispensable parties if only on the limited

issue of the alleged relationship between the locals and the International . . . The respondent named is UE International and the prayer seeks an order against the International . . . To construe the petition to seek relief against the locals is to raise the substantial questions of joinder . . . Consequently it is our ruling that the petition as drawn constitutes an action and seeks an order directed against only the International". (R. 91-93).

On December 27, 1957, the Board denied a motion for rehearing and scheduled hearings to resume before the Board Member Examiner in New York on January 6, 1958. (R. 101, 115) On January 3, 1958, the Board-Member Examiner denied a Motion for a stay of these hearings filed on the same day by UE Locals 259, 262, and 274, pending the disposition of their complaint in the District Court in the instant case. (R. 115, 116)

These petitioners filed their verified complaint (R. 2) on January 4, 1958, invoking the jurisdiction of the District Court under 28 U.S.C. § 1331 and §§ 11-301, 11-305, and 11-306 of the Code of the District of Columbia. Subsequently, petitioner, UE Local 125 moved for leave to intervene as a party plaintiff, with its verified complaint and affidavits (R. 119, 120, 139).

The complaints alleged as set forth above, the status, certifications and contracts of the petitioners, their failure to have the Board dismiss the Attorney General's Petition for failure to join them as indispensable parties, and their consequent exhaustion of administrative remedies. The complaints further allege that the acts of respondent members of the Board in refusing to dismiss the Attorney General's Petition and in proceeding to an adjudication thereon, in their absence, were unauthorized by statute, beyond the jurisdiction of the Board and in violation of petitioners' con-

stitutional rights. The complaints also allege irreparable damage in the threatened deprivation of their certifications, collective bargaining contracts, and status under the National Labor Relations Act, and in the false and defamatory charges made against them in the Attorney General's Petition, all without notice and opportunity to defend. Such acts, the complaints allege, threaten their certifications, contracts, status, property and other rights, whether the Board issues an order against International UE only or against the UE including its Local unions, since under the decisions of the Courts and the National Labor Relations Board, a finding by the Subversive Activities Control Board that International UE is ineligible to exercise rights or privileges or to receive benefits under the National Labor Relations Act renders all its Local Unions similarly ineligible, without any hearing before the National Labor Relations Board.

The complaints pray for temporary and permanent relief enjoining the members of the Board from continuing the hearings or proceedings to an adjudication on the Attorney General's Petition, for a permanent injunction ordering them to dismiss the Petition for failure to join them as indispensable parties, and for a declaratory judgment that the Subversive Activities Control Act of 1950 as amended by the Communist Control Act of 1954 as construed and applied by appellees is unconstitutional.

On May 2, 1958, the District Court granted the motion of UE Local 125 to intervene, denied a motion for summary judgment filed by petitioners, and granted separate motions to dismiss filed by respondents on the ground that the complaint failed to state a claim upon which relief can be granted. (R. 154, 155)

On appeal, the court below affirmed. Its opinion (Appendix B, *infra*, p. 162) does not dispute, although it does not decide, petitioners' claim to be indispensable parties denied notice and hearing before the Board, as required by 50 U.S.C. 792(a) and (c) and by the due process clause. It does not dispute their claim of irreparable injury in the event of an order by the Board adverse to International UE, arising out of the loss of Labor Board rights which they would otherwise be afforded. On the contrary, the Court observed

> "Should appellants be correct in appraising this consequence, the absence of the local unions as parties to the Board proceeding might well cause those proceedings to be fatally defective."

The sole ground for the Court's affirmance was that it lacked equitable jurisdiction because petitioners' suit was premature. It held:

> "Intervention at this stage by the Court would amount to a *pro tanto* control over administrative proceedings still subject to control of appellees. If their control is not validly exercised in the respect here challenged, the remedy must await a time when the effect upon the local unions is more certain and definite in its impact. . . ." (ibid. p. 164)

On December 31, 1958, petitioners filed a petition for rehearing, (R. 166) on the ground that the court had failed to decide the issue, properly raised on the record, as to whether they were entitled to the relief sought against defamatory and admittedly unfounded allegations in the Attorney General's Petition of fraud, illegal union acts and communist activity involving local unions, under *Joint Anti-Fascist Committee* v. *Mc-*

Grath, 341 U.S. 123. On January 12, 1959, the Court below denied this petition without opinion.

The anticipated eight month hearings (R. 10) before the Board on the Attorney General's Petition which began on May 13, 1957 have been stayed from May 20, 1957 to date. The Board first stayed them, while the petitions of the UE locals were pending before it. Then, when the Board proposed to resume hearings on January 6, 1958, the District Court issued a temporary restraining order, returnable January 14, 1958 (R. 107), during the pendency of which, the Board of its own motion, stayed the hearings as a matter of administrative policy (R. 110), until February 24, 1959, since postponed to March 17, 1959.

REASONS FOR GRANTING THE WRIT

1-2. The question of whether an independent suit in equity in the District Court is premature, when brought by a local union as an absent but indispensable party, which has exhausted its administrative remedies in a still pending proceeding against its International under the Subversive Activities Control Act of 1950 as amended, raises novel and important questions under the Act and in relation to administrative proceedings generally. Despite many decisions, under other statutes, in this Court and in the Courts of Appeals, relating to indispensable parties and to the ripeness of agency action for judicial review, the precise question has not been decided. The Third Circuit has held that a local union of the UE is an indispensable party to a suit by the International in the District Court to enforce the rights of the Local and dismissed the suit before trial for failure to join the local. *Fitzgerald* v. *Haynes*, 241 F. 2d 417 (3d Cir. 1957). In-

deed, all courts which have considered the question in such suits of the relationship of a UE Local to UE International, except the earliest decision which reached a tentative decision to the contrary, have held the UE Local to be indispensable and have accordingly dismissed before trial.[1] In administrative proceedings, this Court has held independent local unions of an International to be indispensable parties before the Labor Board, where the Board invalidated the contracts of the locals, and has set aside the Board's order, in this respect, on the ground of failure of the Board to give such locals notice and hearing. *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 231-233. See *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350; *Mallow* v. *Hinde*, 12 Wheat. 193-198 (6 L. ed. 599); *Shields* v. *Barrow*, 17 How. 130, 141; 15 L. ed. 158.

In numerous other cases, involving the question of ripeness of agency action for judicial review, this Court and the Courts of Appeals have held that an independent suit in equity is not premature, although the agency action does not involve any order against the suitor, the action taken is in advance of but controls or affects other administrative hearings and adjudications that may follow, and the outcome of those hearings is not determined. *Columbia Broadcasting System* v. *United States*, 316 U. S. 407 (1942); *Leedom* v. *Kyne*, — U. S. —, 79 S. Ct. 180 (1958). See

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[1] *Fitzgerald* v. *Jandreau*, 16 F. R. D. 576 (1954); *Fitzgerald* v. *Kriss*, 10 F. R. D. 51 (1950); *Fitzgerald* v. *Santoianni*, 95 Fed. Supp. 438 (1950); *UE* v. *Derrickson*, 102 A. 2d 921 (1954); See *Fitzgerald* v. *Abramson*, 89 F. Supp. 504, 511 (1950); *Developments in the Law: Multi-Party Litigation in the Federal Courts*, 71 Harv. L. Rev. 877, 881 (March 1958)

Davis: Ripeness for Judicial Review. 68 Harv. L. Rev. 1122, 1326 (1955). *Farmer* v. *United Electrical Radio and Machine Workers of America* (UE) 110 Fed. Supp. 220, 211 F. 2d 36; cert. den. 347 U. S. 943 (1954). *Rochester Telephone Co.* v. *United States*, 307 U. S. 125 (1939). *Joint Anti-Fascist Committee* v. *McGrath*, 341 U. S. 123 (1951).

The decision of the court below is in conflict with the principles of the foregoing decisions. That court did not dispute the claim of petitioners to be indispensable parties to the proceeding against their International; and all respondents conceded in their Brief in that court:

> "Appellants argue (Br. pp. 31-32) and we concede that if there is a final Board order by appellee Board against the International the latter is ineligible to exercise any rights, privileges or benefits under the National Labor Relations Act. It is not disputed also that Section 9(h) provides that if an international is out of compliance with the provisions of 9(h), its affiliated locals are thereby out of compliance with that section." (Appellees Br. p. 12)

There is no dispute that petitioners were denied notice and hearing of the proceedings before the Subversive Activities Control Board or that they have exhausted all administrative remedies available to them before that Board.

The sole ground for the decision of the Court below was that petitioners' suit in the District Court was premature, because "the administrative proceedings (were) still subject to the control of the appellees" and "the remedy must await a time when the effect

upon the local unions is more definite and certain in its impact." (Appendix B *infra*, p. 164)

But the effect upon petitioners of the denial of their motions to dismiss on the ground of indispensability was as definite and certain in its impact, as other agency action of like character has been held to be, in cases where the administrative proceeding was equally not concluded but the challenge to such action was upheld against the claim of prematurity.

In *Leedom v. Kyne; supra*, the determination of an appropriate unit by the Board, which denied the engineers statutory rights, in the representation proceeding, was subject to control by the Board in a further unfair labor practice proceeding. In *Columbia Broadcasting Co., supra*, the regulation of the Commission which affected the network was subject to control by the Commission in further hearings involving individual licensees. Agency action in these cases was held ripe for judicial review because of the injury caused by violation of statutory or constitutional rights, even though no final, or, indeed, any order was issued against the engineers or the network; the agency action was subject to the control of the Board or Commission in adjudications that might have followed; and the outcome of such adjudications was not determined.

Here, the action of the Board which denied petitioners both statutory and constitutional rights, is equally ripe for judicial review, even though the Board may still control the proceedings to follow. "The non-joinder of an indispensable party is fatal error and the Court cannot proceed to a decree in the absence of an indispensable party". *Washington v. U. S.*, 87 F. 2d 421, 427-9 (9th Cir.). The injury is complete

when the denial of rights is complete, and the denial of due process itself results in irreparable injury. The axe had fallen here as fully as in *Farmer* v. *UE*, *supra*, and, in any event, far enough to do irreparable damage. As against this definite impact of the Board's action, it can only be speculation that the Board will change its mind and in its control of further proceedings against the International allow the claim of petitioners which it has finally denied.

In what respect can the effect of the Board's control of further proceedings be more definite and certain in its impact upon petitioners? Presumably, the court below meant that the District Court would have equitable jurisdiction to afford a remedy if the Board issued a final order against the International, making it, and thereby the petitioners, ineligible to comply with the Labor Management Relations Act 1947. But that would make petitioners' very existence depend upon a determination of fact in a proceeding from which it has been excluded, in violation of statute and constitutional right. Such a result is contrary to the expressed legislative intent to provide every safeguard of constitutional due process in the Act for those subject to its procedures. (*H. Rep. No. 2980 accompanying H. R. 9490*, U. S. Code, Cong. Service 81st Cong. 2nd sess. 1950 p. 3888). Under any reasonable view of such cases as *Rochester Telephone Corp.* v. *United States, supra, Columbia Broadcasting System* v. *United States, supra, Joint Anti-Fascist Committee* v. *McGrath, supra, Consolidated Edison Co.* v. *National Labor Relations Board, supra*, and *Leedom* v. *Kyne, supra*, the decision of the court below presents a conflict in principle which requires resolution by this Court.

The matter is one of importance in the administration and interpretation of the Act which affects the rights of labor organizations; and the question of indispensable parties is one of first impression under the statutory provisions involved.[2] The Act is designed to accomplish a purpose similar to, and to be enforced in tandem with Section 9(h) of the Labor Management Relations Act of 1947. The latter Act deprives local unions of its benefits if their international union is out of compliance with its provisions. *National Labor Relations Board* v. *District 50 U. M. W.*, 355 U. S. 453, 460. No opportunity is provided for notice and hearing on issues of compliance, except for matters involving the construction of the language of Section 9(h), as to who are the officers to file the required affidavits and the like. *Desaulmiers & Co.*, 115 N. L. R. B. No. 164, 37 L. R. R. M. 1481 (1956). The Subversive Activities Control Act of 1950, as amended, is designed to provide precisely the notice and opportunity to be heard, under 50 U. S. C. Sec. 792(a) and (c) which is lacking in Section 9(h) of the Labor Management Relations Act of 1947. The respondent Board's action, in this case, not only destroys the intended complementary effect of the two statutes, but, in an action against an International, leaves local unions, such as petitioners, subject to loss of all rights and benefits under the Labor Act, without a hearing

[2] "The cases considered by the Board during the fiscal year continued to present new and novel legal questions and questions of first impression under the statutory provisions involved . . . One such question, raised during the fiscal year by petitions of outside groups, involves the asserted rights of local unions to be made parties to proceedings under charges brought by the Attorney General against international labor unions". *Subversive Activities Control Board, Eighth Annual Report* (1958), p. 10.

under either statute. There is no evidence that Congress intended any such extraordinary result.

The question of indispensable parties is a threshold question, which if wrongly decided, renders the entire proceeding fatally defective. There is no reason to believe that the respondent Board has any special administrative *expertise*[3] which warrants deference to its judgment concerning labor relations matters generally or the relationship between an international union and its affiliated locals. Nevertheless the decision of the court below defers the resolution of this question, presumably, until some later date, after the question has been decided of whether the International UE is communist infiltrated. But even then, it does not remit petitioners to intervention in appellate review, if International UE appeals from such a determination, but holds that "Should the need arise at any time for equitable relief, the courts would be available to grant it." (Appendix B infra p. 164). Thus, instead of requiring a decision on the question of indispensable parties before the anticipated eight months hearing is begun, such a resolution of the question contemplates that the case may be disposed of on the installment plan, after such a hearing, with the possibility of repeated remands from the District Court to the Board. There is no evidence of any Congressional intent and no valid consideration of policy which justifies such a wasteful, disorderly and injurious procedure. Such encouragement of administrative inefficiency, protracted delay, and unnecessary litigation is inconsistent with the purpose of the Act.

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[3] Only one other case involving a union has ever been before the Board. *Subversive Activities Control Board*, Eighth Annual Report, p. 12.

3. The denial by the court below, without opinion, of the petitioners' petition for rehearing presents a question, indistinguishable in principle, and similar but stronger for the petitioners on the facts, from that partially resolved by the divided opinions of this Court in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123 and related cases.

There can be no reasonable doubt that the Attorney General's verified Petition makes defamatory accusations of fraud, illegal union acts, and communist activity against the entire union, including the local unions, among them petitioners. (R. 15, 1st unnumbered paragraph; R. 17-18, Par. IX; R. 18-26, Pars. X, XI). Counsel for the Attorney General in the Board proceedings stated: "This action is brought by the Attorney General of the United States against the entire Union and that includes all of the locals . . ." (R. 143, 132). Such charges, "in the present climate of public opinion, regardless of their truth or falsity, are the practical equivalent of confiscation and death sentences." (Mr. Justice Black, concurring, in *Joint Anti-Facist Refugee Committee* v. *McGrath, supra*).

There is equally no doubt that these accusations against the locals are unfounded. All the respondents admitted through counsel in their brief in the court below ". . . none of (over one hundred affiliated local labor organizations affiliated with International UE) has been found by the Attorney General to be a Communist-infiltrated organization" (Brief for Appellees p. 17).

Despite this subsequent disclaimer by counsel, respondents have failed to strike these defamatory allegations from the verified Petition, or to permit a

defense against them at any hearing, and the court below has refused to accord petitioners any remedy. These accusations stand therefore as "unauthorized publications of admittedly unfounded designations of the complaining organizations as "Communist'" (*Joint Anti-Fascits Committee* v. *McGrath, supra*) in violation of petitioners' common law right to be free from defamation, as to which petitioners have been denied due process by respondents, with resulting injury. (See *Petition for Rehearing and Other Relief* R.). Whether the Court below misconstrued the Attorney General's Petition as directed only against the International UE or whether it took the disclaimers in the government's brief or the action of the Board in limiting the hearing to the International UE as wiping out the Attorney General's verified accusations, the fact remains that if the *Joint Anti-Fascist* case retains any vitality, the decision of the Court below is in conflict with it.

The question, moreover, is of importance in connection with the interpretation and administration of the Act. The Attorney General should not be permitted to make such accusations, in his verified Petition to the Board, without giving such organizations an opportunity to meet and defend against them, and if he subsequently admits such accusations are unfounded, either he or the Board should strike them from the Petition. Otherwise, the wide publicity surrounding the issuance of the verified Petition does irreparable damage to labor unions, which the subrequent disclaimer buried in an appellant brief can never undo. Orderly procedure requires the disposition of unfounded charges. To permit the Board to allow such charges to stand, without deciding them,

encourages a violation of duty by the Board under 50 U. S. C. 791(e) and unconstitutional and irresponsible action by those charged with enforcing the law. It was argued in the court below that to permit the presence of these locals in a proceeding against their International to defend against such charges, would render it impossible, difficult or inconvenient to administer the Act. But such an argument of necessity has always been the pretext of tyrants. It cannot be justified so long as constitutional guarantees of due process stand.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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.....

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March 9, 1959

APPENDIX

APPENDIX A

STATUTES INVOLVED

Subversive Activities Control Act of 1950, 64 Stat. 987, 50 U.S.C. §§ 781-798 (1952) as amended by the Communist Control Act of 1954, 68 Stat. 775, 50 U.S.C. §§ 781-783 (Supp. V, 1958):

50 U.S.C. Section 791.

(c) It shall be the duty of the Board—

(3) upon any application made under subsection (a) or subsection (b) of section 792a of this title, to determine whether any organization is a Communist-infiltrated organization. As amended July 12, 1952, c. 697, 66 Stat. 590; Aug. 24, 1954, c. 886, § 9(a), 68 Stat. 778; Aug. 5, 1955, c. 580, § 1, 69 Stat. 539; July 31, 1956, c. 804, Title I, § 106(a), 70 Stat. 739.

50 U.S.C. Section 792a. Board proceeding with respect to Communist-infiltrated organizations—Petition by Attorney General for determination; joint respondents; expedition of proceedings

(a) Whenever the Attorney General has reason to believe that any organization is a Communist-infiltrated organization, he may file with the Board and serve upon such organization a petition for a determination that such organization is a Communist-infiltrated organization. In any proceeding so instituted, two or more affiliated organizations may be named as joint respondents. . .

(c) Each such petition shall be verified under oath, and shall contain a statement of the facts relied upon in support thereof. Upon the filing of any such petition, the Board shall serve upon each party to such proceeding a notice specifying the time and place for hearing upon such petition. No such hearing shall be conducted within twenty days of such notice.

(h) When there is in effect a final order of the Board determining that any such labor organization is a Com-

munist-action organization, a Communist-front organization, or a Communist-infiltrated organization, such labor organization shall be ineligible to—

(1) act as representative of any employee within the meaning or for the purposes of section 157 of Title 29;

(2) serve as an exclusive representative of employee of any bargaining unit under section 159 of Title 29;

(3) make, or obtain any hearing upon, any charge under section 160 of Title 29; or

(4) exercise any other right or privilege, or receive any other benefit, substantive or procedural, provided by the National Labor Relations Act, as amended, for labor organization.

(i) When an order of the Board determining that any such labor organization is a Communist-infiltrated organization has become final, and such labor organization theretofore has been certified under the National Labor Relations Act, as amended, as a representative of employees in any bargaining unit—

(1) a question of representation affecting commerce, within the meaning of section 159(c) of Title 29, shall be deemed to exist with respect to such bargaining unit; and

(2) the National Labor Relations Board, upon petition of not less than 20 per centum of the employees in such bargaining unit or any person or persons acting in their behalf, shall under section 159 of Title 29 (notwithstanding any limitation of time contained ther in) direct elections in such bargaining unit or any subdivision thereof (A) for the selection of a representative thereof for collective bargaining purposes, and (B) to determine whether the employees thereof desire to rescind any authority previously granted to such labor organization to enter into any agreement with their employer pursuant to section 158(a)(3)(ii) of Title 29.

Labor Management Relations Act of 1947, 61 Stat. 136:

29 U.S.C. Section 159(h)

"No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title, unless there is on file with the Board an affidavit executed contemporaneously or with the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35A of the Criminal Code shall be applicable in respect to such affidavits. July 5, 1935, c. 372, § 9, 49 Stat. 453; June 23, 1947, 3:17 P.M., E.D.T., c. 120, Title I, § 101, 61 Stat. 143; Oct. 22, 1951, c. 534, § 1 (c,d), 65 Stat. 601."

Administrative Procedure Act, 60 Stat. 243, 5 U.S.C. Section 1009. Judicial Review of Agency Action

JUDICIAL REVIEW

SEC. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

(a) RIGHT OF REVIEW.—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(b) FORM AND VENUE OF ACTION.—The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence of inadequacy there-

of, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

(c) REVIEWABLE ACTS.—Every agency action made reviewable by statute and every final agency action which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

(d) INTERIM RELIEF.—Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

(e) SCOPE OF REVIEW.—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and

statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or other wise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14594

LOCAL 259, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, et al., APPELLANTS

v.

DOROTHY MCCULLOUGH LEE, Individually and as Chairman of the Subversive Activities Control Board, et al., APPELLEES

Appeal from the United States District Court for the District of Columbia

Decided December 18, 1958.

Messrs. Allan R. Rosenberg and *David Cohen*, a member of the bar of the Supreme Court of Pennsylvania, *pro hac vice*, by special leave of court, for appellants.

Mr. George R. Gallagher, General Counsel, Subversive Activities Control Board, with whom *Messrs. Frank R. Hunter, Jr.*, and *Leo M. Pellerzi*, Assistant General Counsel, Subversive Activities Control Board, and *Jerome L. Avedon*, Attorney, Department of Justice, were on the brief, for appellees. *Mr. Anthony F. Cafferky*, Attorney, Department of Justice, entered an appearance for appellee William P. Rogers, Attorney General of the United States.

Before EDGERTON, FAHY and DANAHER, Circuit Judges.

PER CURIAM: Appellants are four local unions affiliated with the United Electrical, Radio and Machine Workers of America, an international union. In the District Court appellants sought to enjoin the members of the Subversive Activities Control Board, individually and as members, and the Atorney General, from continuing proceedings against the International under the Subversive

Activities Control Act of 1950, as amended,[1] and to require the dismissal of the Attorney General's petition before the Board for an order determining that the International is a Communist infiltrated organization. The basis asserted by appellants for the relief thus sought is that they are indispensable parties to the proceedings against the International. The District Court granted appellees' motions to dismiss the complaint for failure to state a claim upon which relief could be granted.

The theory of the complaint in essence is that should the Board make an adjudication under the Subversive Activities Control Act adverse to the International the consequence by virtue of § 9(h) of the Labor Management Relations Act of 1947, would be to deprive not only the International but the locals as well of certain rights and benefits which they would otherwise be afforded under the Labor Management Relations Act of 1947.[2]

Should appellants be correct in appraising this consequence, the absence of the local unions as parties to the Board proceedings might well cause those proceedings to be fatally defective; but notwithstanding this possibility we think the District Court properly dismissed the complaint, for the court was without equitable jurisdiction either to require the Board to join the local unions as parties or to dismiss the proceedings against the International unless the Board did so. Intervention at this stage by the court would amount to *pro tanto* control over administrative proceedings still subject to the control of appellees. If their control is not validly exercised in the respects here challenged the remedy must await a time when the effect upon the local unions is more certain and definite in its impact. Whether or not this would

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[1] 64 Stat. 987, 50 U.S.C. §§ 781-98 (1952), as amended by the Communist Control Act of 1954, 68 Stat. 775, 50 U.S.C. §§ 781-93 (Supp. V, 1958).

[2] 61 Stat. 136, 29 U.S.C. §§ 141-88 (1952).

occur as the result of a final order of the Board adverse to the International, we need not now decide. Should the need arise at any time for equitable relief the courts would be available to grant it. *Cf. Farmer* v. *United Electrical, Radio & Machine Workers*, 93 U.S. App. D.C. 178, 211 F.2d 36, *cert. denied*, 347 U.S. 943.

Affirmed.

Judgment

This cause came on to be heard on the record on appeal from the United States Court for the District of Columbia, and was argued by counsel.

On consideration whereof It is ordered and adjudged by this Court that order of the District Court appealed from in this cause be, and it is hereby, affirmed.

PER CURIAM.

Dated: Dec. 18, 1958